IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. [redacted] 107

ELIZABETH DONNER HANSON, Individually, As Executrix of the Will of Dora Browning Donner, Deceased, and As Guardian ad Litem for JOSEPH DONNER WINSOR and DONNER HANSON, and WILLIAM DONNER ROOSEVELT, Individually, *Appellants*,

vs.

KATHERINE N. R. DENCKLA, Individually, and ELWYN L. MIDDLETON, As Guardian of the Property of DOROTHY BROWNING STEWART, Also Known As DOROTHY B. STEWART and DOROTHY B. RODGERS STEWART, an Incompetent Person, *Appellees*.

MOTION OF APPELLEES TO DISMISS APPEAL AND BRIEF IN SUPPORT THEREOF.

D. H. REDFEARN,
550 Brickell Avenue,
Miami 32, Florida,

C. ROBERT BURNS,
1318 Harvey Building,
West Palm Beach, Florida,
Counsel for Appellees.

Of Counsel for Appellees:

R. H. FERRELL,
550 Brickell Avenue,
Miami 32, Florida.

SOL A. ROSENBLATT,
630 Fifth Avenue,
New York 20, N. Y.

CHARLES RODEN,
630 Fifth Avenue,
New York 20, N. Y.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956.

No. .....

ELIZABETH DONNER HANSON, Individually, As Executrix of the Will of Dora Browning Donner, Deceased, and As Guardian ad Litem for JOSEPH DONNER WINSOR and DONNER HANSON, and WILLIAM DONNER ROOSEVELT, Individually, *Appellants*,

vs.

KATHERINE N. R. DENCKLA, Individually, and ELWYN L. MIDDLETON, As Guardian of the Property of DOROTHY BROWNING STEWART, Also Known As DOROTHY B. STEWART and DOROTHY B. RODGERS STEWART, an Incompetent Person, *Appellees*.

MOTION OF APPELLEES TO DISMISS APPEAL AND BRIEF IN SUPPORT THEREOF.

The appellees, Katherine N. R. Denckla, individually, and Elwyn L. Middleton, as guardian of the property of Dorothy Browning Stewart, also known as Dorothy B. Stewart and Dorothy B. Rodgers Stewart, an incompetent

person, move the court to dismiss the appeal on the three grounds hereinafter stated. Before presenting such grounds, and in the interests of accuracy, an error should be pointed out in appellants' statement of the Nature of the Proceedings as contained in appellants' Jurisdictional Statement. (Appellants have made this error so often in the course of this litigation that at this point it is presumed to be intentional.)

The suit filed by appellees in the trial court was not "an action * * * to determine the validity of the exercise of a power of appointment reserved by Mrs. Dora B. Donner," as stated by appellants on page 2 of their Jurisdictional Statement and elsewhere therein. The prayer of the complaint filed in the trial court makes this obvious. Even the Delaware Supreme Court so found as did the Supreme Court of Florida.[1] Therefore, in fact, the action filed by appellees in the trial court had as its sole purpose the determination of what property passed under the will of Mrs. Donner—an *in rem* type of proceeding permitted under the laws of every one of the forty-eight states. Obviously, the Florida courts were the only tribunals with power to determine such a question since it involved the construction of rights under the will of a Florida citizen, probate of which was pending in a Florida court, and the executrix of which was the appellant Hanson, also a Florida citizen, serving by appointment of a Florida court.

With this comment, we proceed to a statement of the grounds upon which this motion to dismiss the appeal is based.

---

[1]See second paragraph of the Delaware Supreme Court opinion, p. 23a, appellants' Jurisdictional Statement. The Florida Supreme Court similarly found, p. 6a, *Id.*

1. The Appeal Does Not Present Any Substantial Federal Questions.

No argument is required to show conclusively that questions iv, v, and vi, raised by appellants on page 8 of their Jurisdictional Statement, are purely and simply matters of state law, with no federal constitutional significance.

Appellants' questions i, ii, and iii, stated on pages 7 and 8 of their Jurisdictional Statement, on the surface point up federal constitutional matters. However, cursory examination shows they too are without any actual substance.

In essence, as to questions i and ii, Hanson, who is the sole appellant, but wearing three hats herein, and who is a Florida citizen, the Florida executrix of the Florida will of a Florida decedent, serving by appointment of a Florida court, complains because of alleged federal constitutional infirmities in the service upon other co-defendants—the Delaware Trust Companies—without in any fashion charging any federal constitutional infirmity in the personal service upon her. She is the same person who, dissatisfied with the findings of the Florida court as to what passes under the will of which she is the executrix, runs off to Delaware, files a new suit there, hoping to get another result, only to be enjoined by the Florida court from proceeding further in Delaware; she then used her children, also Florida residents and parties in the Florida proceedings to move along the Delaware litigation, solely in an effort to defeat the Florida courts in a proper determination of questions about the very will under which she acts as an officer of the Florida courts.

Under such a state of facts, it is very plain that her standing here is not only without substance, but is com-

pletely frivolous, and dangerously close to practical contempt of the Florida courts by whose appointment she acts as fiduciary.

It is elemental that the Supreme Court of the United States will not assume jurisdiction of a case where the party invoking that jurisdiction has no personal interest but does so in the interests of a third party. Here Hanson, although not attacking the jurisdiction of the Florida courts as to her, says those courts could not validly, under federal constitutional principles, obtain jurisdiction over two of her co-defendants by constructive service, therefore, says she, she has a right to come to this court and complain even though her co-defendants are silent and have not appealed.

Such is not the law. *Liberty Warehouse Co.* v. *Burley Tobacco Growers' Co-op Marketing Ass'n*, Ky., 1928, 48 S. Ct. 291, 276 U. S. 71, 72 L. Ed. 473; *Smith* v. *Indiana*, Ind., 1903, 24 S. Ct. 51, 191 U. S. 138, 48 L. Ed. 125. If the co-defendants—the Delaware Trust Companies—conceive their federal constitutional rights are jeopardized, they have a remedy, but a third party, Hanson here, cannot back into this court of limited jurisdiction riding on the alleged rights of others.

Hanson's complaint about full faith and credit is equally devoid of merit. Succinctly stated, appellant Hanson, with considerable "tongue in-cheek" candor, argues that the Florida courts, including its court of last resort, having ruled on a matter determining what intangible personal property passes under the will of a Florida decedent, under probate in a Florida court wherein Hanson, a Florida citizen, is the executrix appointed by a Florida court, must recede from such ruling because a *nisi prius* court in Delaware reaches a contrary conclusion in an

action commenced by Hanson long after the Florida trial courts had assumed jurisdiction to determine what passed under the will of her mother. In other words, for example, Hanson says, in effect, the Delaware court's view as to what estate assets are subject to the burden of inheritance taxes is binding on the Florida courts where such will is under domiciliary probate. Palpably, appellants' question iii is frivolous and altogether without substance.[2]

Appellant Hanson on page 3 of her Jurisdictional Statement cites certain cases she believes sustain the jurisdiction of this court to hear this appeal. The cases include, among others, the Delaware decision in the litigation she herself brought and which she was enjoined from continuing. Such a decision is of little force or virtue as an authority supporting the jurisdiction of the Supreme Court of the United States herein. The other cases she cites are entirely inapplicable here because they do not concern proceedings to determine what passes under a will, as did the case before the lower court here, but are rather direct attacks on validity of trusts or exercises of powers of appointment. In citing such cases, Hanson makes the same intentional misconstruction of the purpose of the litigation below commented upon in the beginning of this motion and brief.

---

[2]Despite her now insistence that the Florida courts have no jurisdiction to say whether or not the trust assets in question pass under her mother's will, Hanson, before appellees' suit was filed in the trial court, had listed them as assets of the Florida estate and she and her attorneys had petitioned the Florida probate court for fees based upon their inclusion in the assets of the Florida estate!

2. The Federal Questions Sought to Be Reviewed Were Not Timely or Properly Raised or Expressly Passed On.

While it is true the appellants, in their petition for rehearing filed in the Supreme Court of Florida, raised substantially the same matters as presented in their questions i, ii and iii, pages 7 and 8 of their Jurisdictional Statement herein, such questions were not passed upon by the Supreme Court of Florida since the petition for rehearing was denied without comment. In addition, the law is well settled that raising such federal constitutional grounds for the first time in a petition for rehearing in the state court of last resort, comes too late. *Spies* v. *Illinois*, Ill. 1887, 8 S. Ct. 21, 123 U. S. 131, 31 L. Ed. 80. Also, *Bolin* v. *Nebraska*, Neb. 1900, 20 S. Ct. 287, 176 U. S. 83, 44 L. Ed. 382; *Herndon* v. *Georgia*, Ga. 1935, 55 S. Ct. 794, 295 U. S. 441, 79 L. Ed. 1530, reh. den. 56 S. Ct. 82, 296 U. S. 661, 80 L. Ed. 471.

3. The Judgment from Which the Appeal Is Taken Rests on an Adequate Non-Federal Basis.

The controversy below is a routine inquiry into what passed under the Florida will of a Florida decedent, wherein another Florida citizen, appellant herein, was the executrix duly appointed by a Florida court. Such *in rem* actions, usually in the form of declaratory decree proceedings, as here, are common in all states, and are useful vehicles for the orderly administration of estates. The judgment below resulted in nothing more than a judicial declaration of what property passed under the will of the decedent. There was no money judgment against any party. It left open, to be later followed up if desired by any party, any necessary proceedings to implement the decision. Conceivably, such later proceedings will mean

additional litigation in Florida, or elsewhere, to give effect to the declaration of rights, but they are not now before this court or the courts below. Florida law, and Florida law alone, was involved in the proceedings below, and it is not the function or intent of the Supreme Court of the United States to take part in disputes as to the application of Florida law by Florida courts. *U. S.* v. *Hastings*, 1935, 56 S. Ct. 218, 296 U. S. 188, 80 L. Ed. 148; *Nickel* v. *Cole*, Nev. 1921, 41 S. Ct. 467, 256 U. S. 222, 65 L. Ed. 900; *Minneapolis, etc., R. Co.* v. *Washburn Lignite Coal Co*, 1920, 41 S. Ct. 140, 254 U. S. 370, 65 L. Ed. 310.

Wherefore, the appellees respectfully move that the appeal herein be dismissed.

D. H. REDFEARN,
550 Brickell Avenue,
Miami 32, Florida,

C. ROBERT BURNS,
1318 Harvey Building,
West Palm Beach, Florida,
Counsel for Appellees.

Of Counsel for Appellees:

R. H. FERRELL,
550 Brickell Avenue,
Miami 32, Florida.

SOL A. ROSENBLATT,
630 Fifth Avenue,
New York 20, N. Y.

CHARLES RODEN,
630 Fifth Avenue,
New York 20, N. Y.